

VISITATION INSTRUCTION PACKET



TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE NUMBER</u>
Introduction	
When To Use The Packet.....	1
How To Use The Packet.....	2
Tips and Reminders.....	3
Who is Petitioner and Respondent.....	3
Legal Advice.....	3
Organizing Court Papers.....	5
Visitation Process Flowchart.....	6
Section 1: Filing For Visitation	
Starting the Process.....	7
Petition for Visitation.....	7
Petition to Modify Visitation.....	7
Custody Separate Statement.....	9
Information Sheet.....	10
Optional Forms.....	11
Affidavit that a Party's Address is Unknown.....	11
Consent Order-Custody, Visitation.....	11
Waiver of Rights Under the Servicemembers' Relief Act	12
Where to File.....	13
Filing Fee.....	13
Additional Instructions.....	15
Sample Forms	
Petition for Visitation.....	20
Petition to Modify Visitation.....	21
Custody Separate Statement.....	23
Information Sheet.....	26
Affidavit that a Party's Address is Unknown.....	28
Consent Order-Custody, Visitation.....	29

Waiver of Rights Under the Servicemembers' Relief Act..	31
Section 2: Parent Education Class	
Certificate of Completion.....	32
Section 3: Mediation	
Consent Orders.....	34
Temporary Orders.....	35
Section 4: Hearing with a Judge	
Scheduling the Hearing.....	38
Motion for Continuance.....	38
The Day of the Hearing.....	40
Affidavit of Non-Military Service.....	40
The Final Custody Order.....	41
Sample Forms	
Motion for a Continuance.....	42
Affidavit of Non-Military Service.....	43



VISITATION INSTRUCTION PACKET

Use the Visitation Instruction Packet **ONLY** when:

- ❑ You would like to request visitation with a child **OR** change the visitation schedule you currently have with a child. Visitation establishes a schedule of contact between you and a child. You do not receive any custody rights by filing for visitation (For more information on filing for custody, please see the Custody Overview); **AND**
- ❑ The child has been living in Delaware for **AT LEAST 6 CONSECUTIVE MONTHS BEFORE** filing your petition. (There are exceptions to this 6-month requirement. If the child has not lived in Delaware for at least 6 months, talk to an attorney to see if an exception applies to your situation.).

If you and the Respondent already agree about how you want the visitation arrangement to be handled, you may file a **Consent Order**. To file a Consent Order, you and the Respondent write down how you want the visitation arrangement to work and a Hearing Officer will sign your agreement and make it an order of the Court. To obtain a Consent Order, you must file all of the following forms. Each form is described in detail on the page number listed in parenthesis after it. You must file the **Petition for Visitation** (page 7) **OR** the **Petition for Modification of Visitation** (page 7), the **Custody Separate Statement** (page 9), the **Information Sheet** (page 10) and the **Consent Order-Custody, Visitation** (page 11).

To make this Instruction Packet easier to read, it will explain Visitation as if you wanted to file for Visitation of one child. If you would like to have visitation with more than one child and all of the children have the same mother **AND** the same father, you may file for visitation of all of the children on the same petition. **Please note that if any of the children you are seeking visitation with have different fathers or mothers,**

you must file for visitation on separate petitions. For example, if two of the children have one father and one of the children has a different father, you would be required to file two petitions, one for each father.

HOW TO USE THE PACKET

This packet contains general information about the process of filing a Petition for Visitation or a Petition to Modify Visitation, basic instructions on how to complete the Court forms you must file, and samples of the completed Court forms.

You should read the instructions and sample forms carefully **before** filling out any forms. All of the forms must be neatly filled out by hand or typed. **ONLY FILE THE FORMS INCLUDED IN THE FORMS PACKET.** The sample forms included in this Instruction Packet are simply to help you understand how to fill out the real forms in the Forms Packet.

YOU DO NOT HAVE TO COMPLETE ALL THE SECTIONS AT ONCE. For example, you do not have to file the forms in Section 2 at the same time as the forms in Section 1. Read the information carefully to ensure that you know what you are supposed to do and when.

Please look for the shaded written instructions and the following symbols throughout the packet. They will help guide you.



READ THIS SECTION CAREFULLY



THIS DOCUMENT MUST BE FILED



FILL IN THE BLANKS OR WRITE INFORMATION HERE



YOU DO NOT HAVE TO TAKE THESE STEPS NOW.



TIPS AND REMINDERS ...

- ✓ Make sure to read any **Answers to Frequently Asked Questions** on Visitation. They will help you better understand the Visitation process.
- ✓ Remember who is the Petitioner and who is the Respondent.
 - The **PETITIONER** is the person who filed the Petition for Visitation or Petition to Modify Visitation, in other words, you.
 - The **RESPONDENT** is the person replying (responding) to the Petition.
- ✓ Remember that just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to you at the court hearing to prove why the Court should give you what you want.
- ✓ Representing yourself may take a lot of time, may be difficult and may be confusing. The Court will expect you to follow the same rules that attorneys must follow. **If at any point throughout the Court process you are not sure about representing yourself, you should talk to an attorney.**
- ✓ Please remember that **COURT STAFF CANNOT GIVE YOU LEGAL ADVICE**. Should you have a question about what options you have or what you should do, you should talk to an attorney. Just because you talk to an attorney does not necessarily mean that you must hire that attorney to represent you. Ask the attorney if he/she is willing to meet with you and answer your questions without having to hire that attorney for full

representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

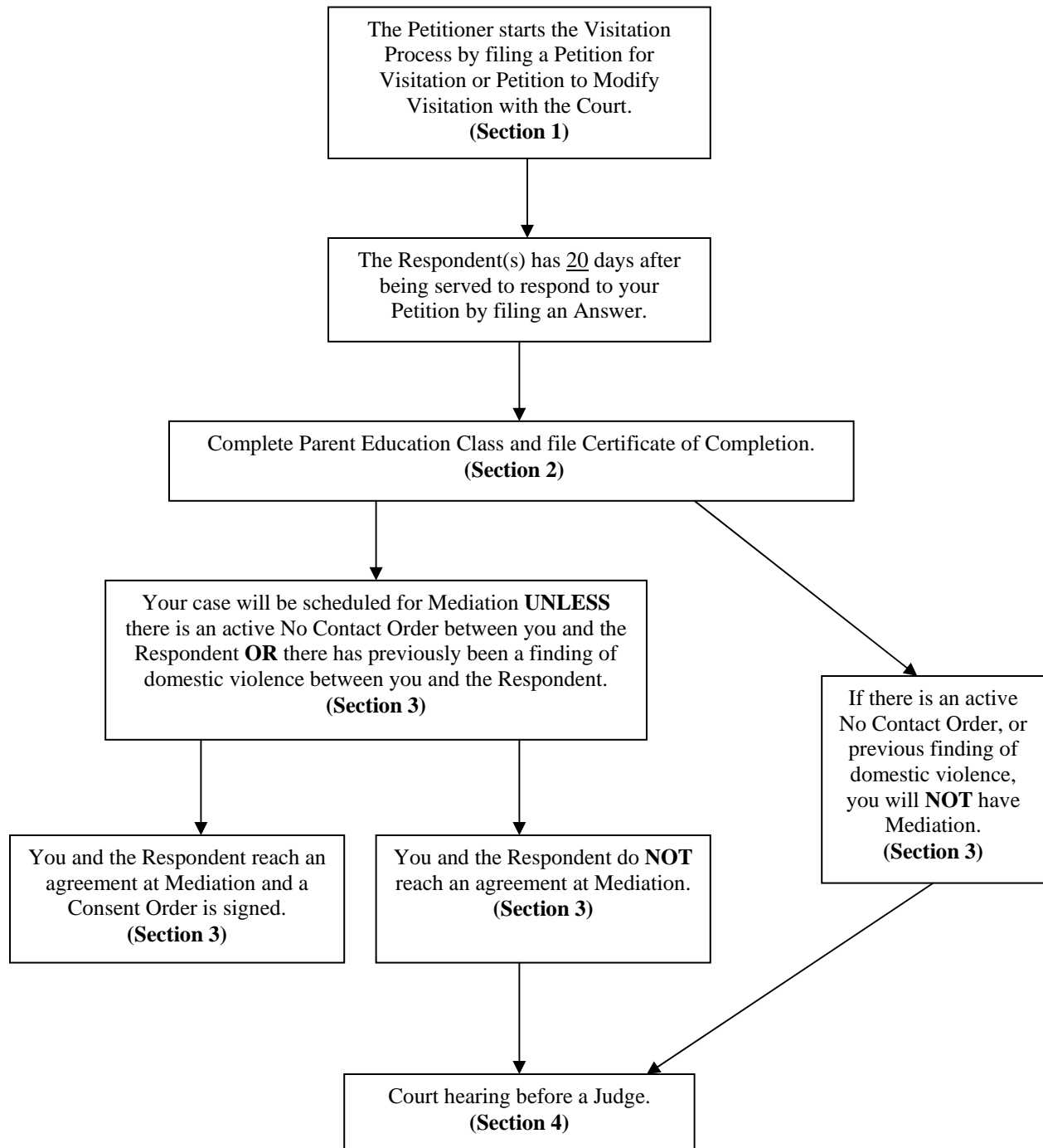
- ✓ If you would like assistance in finding an attorney, you can call the **Lawyer Referral Service** in New Castle County, 302-478-8850, and in Kent and Sussex Counties, 1-800-773-0606. (You may call the same telephone numbers and ask for the **Legal Help Link** to find out if you qualify for free legal assistance.) You also can refer to the **Attorney Roster** that is located at the Family Court Resource Centers. The Attorney Roster is a listing of some of the attorneys who practice family law in Delaware and includes information about how to contact the attorneys and what fees the attorneys charge.
- ✓ **Always bring your government issued photo identification** with you (such as your driver's license, or a state-issued photo identification card) whenever you get a Court form notarized.
- ✓ **THERE IS A LOT OF PAPER IN A COURT CASE AND HAVING THE COURT MAKE YOU COPIES CAN BE VERY EXPENSIVE.**

PLEASE READ AND REMEMBER THESE IMPORTANT TIPS

REMEMBER

- **Keep a copy of every document and court paper.**
- **Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.**
- **Bring the folder with your papers with you every time you go to Court.**
- **When you file a document with the Court, bring the required number of copies of each paper and an extra copy for you to have “clocked-in.” Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document. You may make copies at the Resource and Self-Help Centers but there is a small fee.**
- **When you complete a document or form for filing with the Court, always include the full case name and file and petition numbers (if there are any).**
- **When you must mail something, we suggest that you use regular mail AND “certified mail, return receipt requested” so that you have proof the other party received the envelope. If you cannot afford to pay for “certified mail” we suggest you get a “certificate of mailing” at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource and Self-Help Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.**

VISITATION PROCESS



SECTION 1

STARTING THE VISITATION PROCESS



You **MUST** file the ORIGINAL and at least ONE (1) COPY of each form below with the Court.

- Make a copy of each completed form for your records.
- Have your set of copies “clocked-in” for your file. Having a paper “clocked-in” means that the Court will stamp on the copy the time and date you filed your papers. Your clocked-in copy will serve as proof of the time and date you filed the paper.



Petition for Visitation OR Petition to Modify Visitation form. (file the original and one copy one copy for each Respondent).

- Any person who is over the age of 18 may file for visitation.
- You only need to file ONE of the above petitions. The following information will help you to decide which petition to file.
 - If you and the other party have never had a court-ordered visitation schedule with the child (this includes a visitation schedule that is part of a Custody Order), you **MUST** file a Petition for Visitation asking the Court to **enter an initial visitation order**.
 - If you and the other party do have a court-ordered visitation schedule with the child, you **MUST** file a Petition to Modify Visitation asking the Court to **change** the current visitation schedule.
- The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, **ALL** of the people involved with the case must be notified. By naming a person as a Respondent, you are asking the Court to notify him/her of the petition. If you are a parent filing for visitation you must name the other parent as a Respondent. You must also name any current guardian or custodian if that person is not the other

parent. If you are a non-parent filing for visitation, always include the natural or adoptive parents of a child as Respondents in a Petition for Visitation or a Petition to Modify Visitation. If you fail to notify any of the necessary parties, your petition may be deficient and you may have to start the process over, including paying another filing fee.

- When alleging facts in your Petition for Visitation or Petition to Modify Visitation, you want to give the Court information so that it can decide what visitation arrangement is in the child's "**best interest.**" Generally, the child's "best interest" is the legal standard the Court must follow when deciding who should have visitation with a child. (See Title 13 of the Delaware Code, section 722.) The Court will want to know about the following things when deciding what is in the child's "best interest." Explain to the Court how the following things apply to your situation.

1. The wishes of the child's parents as to his/her custody and living arrangements;
2. The wishes of the child as to his/her custody and living arrangements;
3. The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child's home;
4. The child's adjustment to his/her home, school and community;
5. The mental and physical health of all individuals involved;
6. How well each parent has in the past and continues to satisfy their parental rights and responsibilities with respect to their children;
7. Evidence of domestic violence; and
8. The criminal history of any party or adult member of a household, including guilty pleas, pleas of no contest and criminal convictions.

The Court will also consider the child's maturity. The Court will establish a visitation schedule that will allow the child to have frequent and meaningful contact with both parents unless that contact would endanger the child's physical health or emotional development. (See Title 13 of the Delaware Code, section 728 (a).)

- If you are filing for grandparent visitation, there are additional legal requirements you should be aware of. Please see page 17 for more information regarding Grandparent Visitation.
- When writing down your allegations, you should list each point you want to make in its own **numbered paragraph**. This will make it easier for the Court and the Respondent(s) to understand why you think you should have visitation with the child. An example of numbered paragraphs can be found on the Sample Petition for Visitation and the Sample Petition to Modify Visitation found at the end of this section (see pages 20 & 21).
- If you need more space to write, you may attach additional pages to the petition. Be sure to state on the petition that you have attached more pages, so the Court and the Respondent(s) will know to look for additional information.
- You must sign your Petition for Visitation or Petition to Modify Visitation in the presence of a notary public or authorized Court staff.



Custody Separate Statement form. (file the original and one copy for each Respondent).

- The Custody Separate Statement explains to the Court a child's past and present living arrangements, so the Court can determine if it has authority to decide your petition. If all of the children have had the **same living arrangements as one another** for the past five years, then you may include all children on a single form. However, if the children have **lived apart** from each other sometime during the past five years, you must

complete a separate form for each child. For example, if last year, one child resided with you and another child resided with the other parent, it would be necessary to file two Custody Separate Statements, explaining where each child lived.



Information Sheet form. (file the original).

- This form provides the Court with general information about the parties that allows the Court to adequately notify the parties about upcoming proceedings and to maintain up-to-date records.

BELOW ARE OPTIONAL FORMS

ONLY file the following forms if the situation applies to you.



Affidavit that a Party's Address is Unknown form. (*file the original and one copy*).

- **ONLY** file this form if you do **NOT** know where the Respondent(s) lives.
- You must provide the Court with each Respondent's current address. If you do not know where the Respondent(s) currently lives, you must **try to locate** him or her. Ways to do this include talking to the Respondent's friends or relatives or checking the Internet. If, after looking for the Respondent(s), you cannot find his/her current address, you must complete this form. **Do not complete** this form until you have made an effort to locate the Respondent(s).
- You must complete this form before you publish notice of the matter in the newspaper. Please see pages 15-17 for more information regarding Notice by Publication.
- This form is not in the Forms Packet. This form is available in the Family Court Resource Centers.



Consent Order-Custody, Visitation (*file one original*)

- File this document only if **you and the Respondent(s) have already agreed** on what the visitation should be.
- On this form you will describe for the Court which parent will have visitation with the child and what the visitation schedule will be.
- When describing the visitation schedule, be as **specific** as possible. Explain the places, dates and times that visitation will occur. Also, explain to the Court who will be responsible for driving the child to and from the visitations. You may want to avoid agreements that simply state that

“visitation shall be by mutual agreement of the parties.” While this may make it easier for you and the Respondent to reach an agreement now, it gives you no guidance in how visitation will occur should you and the Respondent be unable to reach a mutual agreement regarding visitation at a later date. It may be better to decide on the details of visitation now, rather than have to come back to Court to resolve your differences in the future.

- You and the Respondent must both sign and have notarized the Consent Order.
- Before you file the Consent Order, you and the Respondent(s) **may** have to meet with a court employee to review the terms of your agreement.
- Once you have filed your agreement with the Court, it will be forwarded to a Commissioner who will review your agreement. If the Commissioner finds that the agreement is in the best interest of the child, then he or she will sign the agreement and it will become a court order, called a **Consent Order**.
- Once the Commissioner signs the Consent Order, it is a court order and you and the Respondent **MUST** follow the terms of the Order. The Court will mail a copy of the signed order to you and the Respondent(s).
- The Consent Order is **NOT** included in the Forms Packet. This form is available in the Family Court Resource Centers and on the Family Court Website.



Waiver of Rights under the Servicemembers' Civil Relief Act (*file the original and one copy*). **Complete this section ONLY if the Respondent IS in the military.**

- If the Respondent(s) is in the military, the Respondent(s) must file an Answer, an Affidavit of Appearance or **YOU** must have the Respondent(s) sign a Waiver of Rights under the Servicemembers' Civil Relief Act. If the Respondent(s) does not file one of these documents, you must file a **Motion to Appoint an Attorney**. You should start this process as soon

as possible because it takes time. The Court will not schedule your visitation hearing until you complete this process.

- If there are multiple Respondents who are in the military, a separate form must be filed for each Respondent.



BE SPECIFIC WHEN COMPLETING THE FORMS and make sure you address **ALL** of the areas explained on pages 8 & 9 in your petition. When you complete a form, write in blue or black ink **AND** write neatly.



File the forms at the Family Court **in the County where the child currently lives**. If the child does not currently live in Delaware, you should talk to an attorney before filing to make sure the Delaware Family Court is the right Court to hear your case and to find out in which state and county you should file.

- In Kent and Sussex Counties you may file your papers at the Resource Centers on the first floor of the Family Court buildings.
- In New Castle County, you may file your papers at the Resource Center on the second floor of the New Castle County Courthouse or, **IF**, you have all of the forms completed, you do **NOT** have any questions, you have made the necessary copies and you do **NOT** need any papers notarized, you may file your papers at the **Central Filing and Payment Center** located on the first floor of the New Castle County Courthouse. There is no staff assistance at the **Central Filing and Payment Center**.
- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed or e-mailed.



A filing fee is charged for each petition that is filed. To find out what the filing fee is, you can look at the Family Court website or go to the Family Court Resource Centers. The filing fee can be paid in cash, by credit card, by debit card, by check or by money order made payable to “Family Court”. If you are filing by mail, you may only

pay by check or money order. **FAMILY COURT WILL NOT ACCEPT YOUR PAPERS WITHOUT THE FILING FEE.** There are additional costs if you must publish notice of this action. (See pages 15-17 more information of when publication is necessary.)

ADDITIONAL INSTRUCTIONS FOR SECTION 1



SERVICE OF PROCESS

Each Respondent **must receive** a copy of the Petition for Visitation or Petition to Modify Visitation. The delivery of the petition and any other forms you file is called **Service of Process**. The way that you accomplish Service of Process depends on how much information you can provide the Court about where the Respondent(s) lives. Determine from the following options how Service of Process should be accomplished in your case.

❑ **The Respondent Lives in Delaware and You Know His/Her Address**

If the Respondent lives in Delaware **AND** you know his/her address, a **Process Server** (someone whose job involves delivering Court papers) will give a copy of your petition and other papers to the Respondent(s). This is called **Personal Service**. You do not need to fill out any additional paperwork.

❑ **The Respondent Does Not Live in Delaware and You Know His/Her Address**

If a Respondent(s) does **NOT** live in Delaware **AND** you know the Respondent's address, the Court will mail your papers *via* certified mail, return receipt requested, to the Respondent(s). If delivery of the certified mail is unsuccessful, **YOU** must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the Respondent(s) lives. This is referred to as **Service of Process by Mail and Publication**. You must also complete an Affidavit that Address is Unknown form (see page 11). The Court will notify you by mail if you need to publish notice in the newspaper.

❑ **You Do Not Know Where the Respondent Lives or Works**

If you do **NOT** know where a Respondent lives or works and, therefore, the Process Server cannot deliver your petition to that Respondent, **YOU**

must publish **AT YOUR EXPENSE** a legal notice of your petition in an approved newspaper in the county and state where the Respondent's last known address was located. You must also complete an Affidavit that Address is Unknown form (see page 11).



PUBLICATION

- Instructions on how to publish notice of a court action are available in the Resource Centers. It is important to carefully follow the instructions for publication. If you do not properly publish the notice, your Petition for Visitation or Petition to Modify Visitation could be dismissed.
- You must publish the notice **in the county where the Respondent(s) resides or in the county where the Respondent's last known address was located.** You are responsible for contacting the newspaper and paying the necessary publication fee to the newspaper.
- If you must publish the notice, **YOU** must provide **PROOF** to the Court that you published the notice. If the Court does **NOT** receive satisfactory proof of publication **WITHIN 30 DAYS** from the date you filed your petition, the Court may dismiss your case and you will have to start all over again, including paying another filing fee.
- You may publish in the following **approved Delaware newspapers** depending on where the Respondent(s) resides.
 - **New Castle County**
News Journal
950 W. Basin Road
New Castle, Delaware 19720
(302) 324-2500
 - **Kent County**
Delaware State News
421 Webb's Lane
Dover, Delaware 19903
(302) 674-3600

- **Sussex County**
Sussex Countian
 P.O. Box 40 (13 South Front Street)
 Georgetown, Delaware 19947
 (302) 855-7400

- If you must publish in an out-of-state newspaper, you should select a newspaper that is widely distributed in the area where the Respondent(s) lives (or last lived if you do not know the address) **AND** the newspaper should be one which the Respondent(s) would most likely read.



THE ANSWER

- Once the Respondent(s) has been served with the Petition for Visitation or Petition to Modify Visitation, each Respondent(s) has **20 days** from the date of service (the date the court papers are delivered to the Respondent(s)) to respond by filing an **Answer** to your petition. If there is more than one Respondent in your case, each Respondent must file his/her own separate Answer. You should receive a copy of the Respondent's Answer in the mail.
- On the Answer to your petition, the Respondent(s) must **admit** (agree with) or **deny** (disagree with) each of the statements you made in your petition. The Respondent(s) may explain why he/she disagrees with the statement.



GRANDPARENT VISITATION

- A specific statute addresses grandparent visitation in Delaware. That statute provides the following (See Title 10 of the Delaware Code, section 1031 (7)):
- The Family Court may give grandparents **reasonable** visitation with their grandchildren; **AND**

- Visitation with the grandparents must be in the **best interest of the child**; **AND**
 - Whenever possible, maternal grandparents' visitation should occur during the time when mother has the child and paternal grandparents' visitation should occur when father has the child.
- The United States Supreme Court has also ruled regarding grandparent visitation. The Supreme Court found that unless a parent is unfit, **great weight** should be given to the parent's opinion on whether grandparents should be allowed visitation. For example, if the parents of a child decide to deny visitation to the maternal grandparents, the Court will presume that decision is in the best interest of the child. Accordingly, the Court will give that decision great weight when determining whether visitation with the grandparents is in the best interest of the child.
- Grandparents seeking visitation over objection of the parent(s) must be prepared to demonstrate either that the parents are **unfit** to care for the child **OR** that despite the parents' objection visitation is in the **child's best interest**. When dealing with grandparent visitation, it may be beneficial to contact an attorney who can help you better understand the specific laws relating to grandparent visitation.

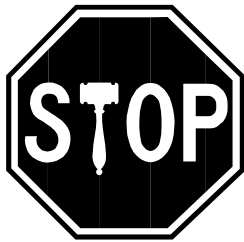


VISITATION AND CHILD SUPPORT

- Visitation and child support are separate legal actions. Visitation rights are not contingent upon the payment of child support. Likewise, the obligation to pay child support exists regardless of whether visitation is taking place. In other words, a parent cannot be denied visitation with a child simply because he/she has not paid child support. Also, a parent may have to pay child support even though he/she is not allowed visitation with a child.

- For more information on the obligation to pay child support, please see the Child Support Overview and Instruction Packet, or contact the Division of Child Support Enforcement or an attorney.

**SECTION 2 BEGINS AFTER THE
SAMPLE FORMS FOR SECTION 1.**



**YOU SHOULD BEGIN SECTION 2 ONCE YOU
HAVE FILED THE FORMS IN SECTION 1.**

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

PETITION FOR VISITATION

Petitioner			Respondent			File Number	
Name	Anne C. Smith		Name	John D. Smith		CK04-12111	
Street Address	101 Oak Street		Street Address	490 Pine Street		Petition Number	
Apt. or P.O. Box Number	Apt. # 123		Apt. or P.O. Box Number				
City	State	Zip Code	City	State	Zip Code		
Dover	DE	19901	Wilmington	DE	19899		
Social Security Number	Date of Birth		Social Security Number	Date of Birth			
111-22-3333	2/3/64		787-98-6767	7/13/65			
Attorney Name and Phone Number	n/a		Attorney Name and Phone Number	n/a			

IN THE INTEREST OF the following child(ren):

Name	Date of Birth	Name	Date of Birth
Doug A. Smith	10/14/91	Mary J. Smith	4/17/96
Name	Date of Birth	Name	Date of Birth
Name	Date of Birth	Name	Date of Birth

The said child(ren) live with (Name): John D. Smith
Relationship to child(ren): Father
490 Pine Street Wilmington DE 19899
(STREET ADDRESS) (CITY) (STATE) (ZIP CODE)

Petitioner alleges the following facts: (Please list in consecutively numbered paragraphs. Attach additional pages if needed.)

1. The children lived with Mother their entire lives until Mother was forced to leave the marital home because of Domestic Violence on January 1st 2004.
2. Mother has been the children's primary caregiver and it is their best interest to spend a substantial amount of time with her.
3. Father works on weekends and it is in the best interest of the children to visit with Mother while Father is working than spend time with a babysitter.

List your allegations in numbered paragraphs.

Petitioner requests that Visitation be as follows: (Attach additional pages if needed.)

Mother will have visitation with the children every weekend from after school on Friday until 4:00pm on Sundays when Father returns from work. Mother will transport the children to and from visitation. Mother will make sure that the children attend all soccer games scheduled on the weekends. Mother will not have visitation with the children during the week. The parties will follow the standard visitation guidelines regarding holidays and summer vacation.

Describe the visitation schedule you want to have in detail.

WHEREFORE, Petitioner prays that a Summons issue to Respondent and that the Court grant the relief prayed for or such relief as may be just.

Signed by _____ AND SUBSCRIBED
notary or court staff. this date,

March 17, 2004



Donna King

Notary Public/Clerk of Court

Sign in the presence of a notary or court staff.



Anne C. Smith

Movant/Attorney

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

PETITION TO MODIFY VISITATION

Petitioner		Respondent			
Name	Anne C. Smith	Name	John D. Smith	File Number	CK04-12111
Street Address	101 Oak Street	Street Address	490 Pine Street	Petition Number	
Apt. or P.O. Box Number	Apt. # 123	Apt. or P.O. Box Number			
City	Dover	City	Wilmington		
State	DE	State	DE		
Zip Code	19901	Zip Code	19899		
Social Security Number	111-22-3333	Social Security Number	787-98-6767		
Date of Birth	2/3/64	Date of Birth	7/13/65		
Attorney Name and Phone Number	n/a	Attorney Name and Phone Number	n/a		

IN THE INTEREST OF the following child(ren):

Name	Date of Birth	Name	Date of Birth
Doug A. Smith	10/14/91	Mary J. Smith	4/17/96
Name	Date of Birth	Name	Date of Birth
Name	Date of Birth	Name	Date of Birth

The said child(ren) live with (Name): John D. Smith

Relationship to child(ren): Father

490 Pine Street (STREET ADDRESS) Wilmington (CITY) DE (STATE) 19901 (ZIP CODE)

Petitioner requests the Court enter an order modifying a prior visitation order of Judge Howell, dated 9/15/03, and in support of the following circumstances. (Please list in consecutively numbered paragraphs):

Look on the current visitation order to find the name of the judge that issued the order and the date the order was issued.

1. The children have been living with Father and visiting with Mother every other weekend.
2. Father has taken a new job that requires him to work both Saturday and Sunday of every week. Father is currently having to pay for child care for the weekends that Mother doesn't have visitation.
3. It is the best interest of the children to have visit with Mother every weekend instead of being left with a babysitter.

List your allegations in numbered paragraphs.

Petitioner requests that Visitation be as follows:

Mother will have visitation every weekend beginning after school on Fridays and lasting until 4 pm on Sunday afternoon when Father returns from work. Mother will ensure that the children get attend any soccer games that are scheduled on the weekends. Mother will provide transportation to and from visitation. Mother can pick the children up at school on Friday afternoon and take them home on Sunday afternoons. All other provisions of the current visitation order shall remain the same.



Describe the visitation schedule you want to have in detail.

WHEREFORE, Petitioner prays that a Summons issue to Respondent and that the Court grant relief prayed for or such other relief as may be just.

SWORN TO AND SUBSCRIBED before me
this date,

March 17, 2004



Sign in the presence of a notary or court staff.



Anne C. Smith
Petitioner/Attorney

Donna King

Clerk of Court/Notary Public



Signed by notary or court staff.

Address (if not stated above)



The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County


Check the county in which you are filing.

CUSTODY SEPARATE STATEMENT IN COMPLIANCE WITH


TITLE 13, SECTION 1928 OF THE DELAWARE CODE


 Petitioner Anne C. Smith	 Respondent John D. Smith	File No.:
---	--	-----------

 1. What type of petition are you filing? Petition for Visitation


 2. Who is the child(ren) named in your petition? (Please provide full name and date of birth)

Doug A. Smith	10/14/91	Mary J. Smith	4/17/96

 3. Have all the children listed above continually resided with one another? ☒ Yes ☐ No
If you answered "No," the children have not continually resided with one another, please complete a Custody Separate Statement for each child.

 4. Where is the child(ren) living as of today's date?

490 Pine Street	Wilmington	DE	19899
Street Address	City	State	Zip Code
John D. Smith	Father		
Name of person(s) child(ren) is living with	Relationship to child(ren)		

 5. During the past five years, where have the child(ren) lived? *List addresses from the most recent to the oldest beginning with the address where the child(ren) currently lives. If the child(ren) is under the age of five years old end with the first address where the child lived.*

Address where child(ren) currently resides	City	State	Zip Code
490 Pine Street	Wilmington	DE	19901
Date child(ren) lived there	Name of person(s) child(ren) is living with	Relationship to child(ren)	
1/1/2004-present	John D. Smith	Father	
Person's current address	City	State	Zip Code
same as above			

Address where the child(ren) lived before that.	City	State	Zip Code
490 Pine Street	Wilmington	DE	19899
Date child(ren) lived there	Name of person(s) child(ren) is living with	Relationship to child(ren)	
8/10/2002-12/31/2003	John and Anne Smith	Parents	
Person's current address	City	State	Zip Code
101 Oak Street, Apt. # 123	Dover	DE	19899

Address where the child(ren) lived before that.	City	State	Zip Code
6160 Beachfront Drive	Virginia Beach	VA	23464
Date child(ren) lived there	Name of person(s) child(ren) is living with	Relationship to child(ren)	
Birth to 8/10/2002	John and Anne Smith	Parents	
Person's current address	City	State	Zip Code
Same as above			

Address where the child(ren) lived before that.		City	State	Zip Code
Date child(ren) lived there	Name of person(s) child(ren) is living with		Relationship to child(ren)	
Person's current address		City	State	Zip Code



6. Check **ONE** and complete as directed.

☒
☐

I have not been involved in any other court action for custody and/or visitation of this child(ren).
I have been involved in another court action for custody and/or visitation of this child(ren). *If you check this box, complete the information below. Attach additional sheets if necessary.*

TYPE OF ACTION (custody, visitation or modification)	PERSON who filed action	STATE action was filed in	COURT where the action was filed
DATE action was filed	CASE NUMBER	RESULT of action	DATE OF ORDER

TYPE OF ACTION (custody, visitation or modification)	PERSON who filed action	STATE action was filed in	COURT where the action was filed
DATE action was filed	CASE NUMBER	RESULT of action	DATE OF ORDER



7. Check **ONE** and complete as directed.

☐
☒

I do not know of any other court action such as, Protection From Abuse, Termination of Parental Rights, Guardianship, Adoption or Paternity involving myself, the other party or the child(ren) that could affect this petition.
I, the other party or the child(ren) have been and/or are currently involved in another court action such as, Protection From Abuse, Termination of Parental Rights, Guardianship or Adoption, that could affect this petition. *If you check this box, complete the information below. Attach additional sheets if necessary.*

TYPE OF ACTION (PFA, TPR, Guardianship, Adoption)	PERSON who filed action	STATE action was filed in	COURT where the action was filed
PFA	Anne C. Smith	DE	Family Court
DATE action was filed	CASE NUMBER		
12/31/04	CK04-12111		

TYPE OF ACTION (PFA, TPR, Guardianship, Adoption)	PERSON who filed action	STATE action was filed in	COURT where the action was filed
DATE action was filed	CASE NUMBER		

Check **ONE** and complete as directed.

- ☒ No one other than the parties have physical custody, legal custody or visitation rights with the child(ren).
- ☐ A person(s) other than the parties have physical custody, legal custody or visitation rights with the child(ren). *If you check this box, complete the information below. Attach additional sheets if necessary.*

Name of person(s) child(ren) is living with		Relationship to child(ren)	
Address of person(s) where child(ren) reside		City	State
			Zip Code

Name of person(s) child(ren) is living with		Relationship to child(ren)	
Address of person(s) where child(ren) reside		City	State
			Zip Code

SWORN TO AND SUBSCRIBED
before me this date,

March 17, 2004



Sign in the
presence of
a notary.



Anne C. Smith

Petitioner



Signed
by
notary or
court
staff.

Donna King
Notary Public

The Family Court of the State of Delaware

Fill in the
date you file
the form.



INFORMATION SHEET - PLEASE PRINT

Date: March 17, 2004 File No. : _____

Please fill in A to K pertaining to you the Applicant (Petitioner).



A. Name: Anne C. Smith



B. Address: 101 Oak Street, Apartment #123
Dover, Delaware 19901



C. Phone: Home: (302) 555-1111 Work: (302) 555-9999



D. Employer & Work Address: ABC Child Care Center, 500 Pine Street, Dover, Delaware 19904

Hours/Shift: 7:30 to 4:30 Monday-Friday



E. Social Security No.: 111-22-3333 F. Date of Birth: 2/3/64



G. Description: Sex: F Race: white Height: 5'4" Weight: 135 lbs Hair: blond Eyes: brown

Marks/Scars/Tattoos: none



H. Type of Vehicle operated by you: 1998 Honda Accord



I. Driver's License: DE 7654 J. Your relationship to the Defendant/Respondent: spouse
State and Number



K. Attorney: none

If you are filing for Custody, Visitation, Support or Petition for Protection from Abuse please fill out the information needed below in reference to the child(ren) who are involved..

Children (Custody/Visitation/Support/Petition for Protection from Abuse)

Name	Relationship	Sex	Date of Birth
<u>Doug A. Smith</u>	<u>Son</u>	<u>Male</u>	<u>10 / 14 / 91</u>
<u>Mary J. Smith</u>	<u>Daughter</u>	<u>Female</u>	<u>4 / 17 / 96</u>
			<u>/ /</u>
			<u>/ /</u>
			<u>/ /</u>
			<u>/ /</u>
			<u>/ /</u>

Please fill in L to X pertaining to the Defendant/Respondent..(For additional respondents use additional sheets)

L. Defendant/Respondent is a: (Check One) ☒ **ADULT** ☐ **JUVENILE**

M. Name: John D. Smith

N. Address: 490 Pine Street

Wilmington, Delaware 19899

O. Phone: Home: (302) 555-9876 Work: (302) 555-3434

P. Employer and Work Address: XYZ Corporation, 67 Walnut Avenue, Newark, Delaware 19867

Hours/Shift: 9 am -5pm, Monday-Friday

Q. Social Security No.: 787-98-6767

R. Date of Birth: 7/13/65

S. Description: Sex: M Race: white Height: 6'0" Weight: 190 lbs Hair: black Eyes: brown

Marks/Scars/Tattoos: tattoo of an eagle on right shoulder

T. Drivers License No.: DE93765

U. Type of vehicle operated by Defendant/Respondent 99 Trailblazer

V. Parent's Name (if a Juvenile): _____

W. Time when Respondent is usually home: 7pm-6:30 am, Monday-Friday and Mornings on the weekends

List places where the Respondent spends time other than at home or at work.

X. Any additional information about Respondent that may aid the process server in locating him/her to serve this petition: _____

If you are unable to locate the Respondent at his place of residence or his place of employment, he spends a lot of time at brother's house which is located at 775 Spruce Lane, Newark, DE 19867.

Write directions to each address list on this form to make sure that the process serve can locate the Respondent.

DIRECTIONS TO RESPONDENT'S RESIDENCE

Home: Go west on 8th Street until you reach Pine Street. Turn right and go 3 and a half blocks. The Respondent's house is on the right and is white with blue shutters.

Work: Take I-95 towards Baltimore. Get off at Exit 10 and take your first right onto Cherry Drive. Go about a mile and a half. Turn left onto Walnut Ave. XYZ Corporation is on your left.

Brother: Go two blocks past Respondent's home to 10th Street. Turn left and go one block to Spruce Lane. Turn right. It is the second house on the right. The house is green.

The Family Court of the State of Delaware

in and for ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

AFFIDAVIT THAT A PARTY'S ADDRESS IS UNKNOWN

Petitioner

Last First MI
Smith Anne C.

Respondent

Last First MI
Smith John D.

File No.

CPI No.

Fill in the county in which you are filing.

State of Delaware
County of Kent

SS.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this 17th day of March, 2004, personally appeared before me, a Notary Public for the State and County aforesaid, Anne C. Smith, ("Affiant"), who, being by me duly sworn according to law did depose and say:

The person filling out the form is the "Affiant" and his/her name goes here.

1. My name is Anne C. Smith
2. I do not know the current address and/or telephone number, nor do I know anyone who could provide me with the current address and/or telephone number of John D. Smith. I have contacted his/her (Please check as appropriate) ☐ Parent ☐ Spouse ☐ Employer ☒ Other: Respondent's Brother. His/Her last known address and telephone number were:

490 Pine Street
Wilmington, Delaware 19899

Fill in the date that the Respondent last lived at the above address.

as of January 10, 2004.

3. I have had no contact with him/her since January 1, 2004.
4. I have been informed of my responsibility to accomplish publication and my failure to do so will result in the petition being dismissed.
5. The information contained herein is true and correct to the best of my knowledge and belief.



Sign in the presence of a notary.



Anne C. Smith

Affiant

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.



Signed by notary or court staff.

Donna King

Notary Public

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

CONSENT ORDER – CUSTODY, VISITATION

Check the county in which you are filing.

Petitioner

v. Respondent

Name Anne C. Smith	Name John D. Smith	File Number CK04-12111
Street Address 10 Oak Street	Street Address 490 Pine Street	
Apt. or P.O. Box Number Apt. #123	Apt. or P.O. Box Number	Petition Number 04-42301
City Dover State DE Zip Code 19901	City Wilmington State DE Zip Code 19899	
Attorney Name and Phone Number n/a	Attorney Name and Phone Number n/a	

IN THE INTEREST OF the following child(ren):

Name (Child #1) Doug A. Smith	Date of Birth 10/14/91	Name (Child #2) Mary J. Smith	Date of Birth 4/17/96
Name (Child #3)	Date of Birth	Name (Child #4)	Date of Birth
Name (Child #5)	Date of Birth	Name (Child #6)	Date of Birth

The parties in the above-entitled case hereby agree upon the following arrangement and do consent to the entry of an Order providing for the same:

Type of Custody: ☒ Joint Custody ☐ Sole Custody

Custody Awarded to: **Anne C. Smith and John D. Smith**

Physical Placement with: **Anne C. Smith**

Relationship: **Mother**

Address: **10 Oak Street, Apt. #123**

Dover, DE 19901

Visitation Awarded to: **John D. Smith**

Relationship: **Father**

Address: **490 Pine Street**

Wilmington, DE 19899

Check which type of custody you have agreed upon. If you check Joint Custody, you must list both parents on the next line. If you check Sole Custody list only one of the parents on the next line.

Fill in the name of the parent that the child is going to live with most of the time.

OVER

Visitation shall be as follows:



Describe the visitation schedule you have agreed on in detail.

Father shall have visitation with the children every other weekend beginning the first weekend in August. Father will pick the children up from school on Friday afternoon and will have them with him until 4 p.m. on Sunday afternoon. Mother and Father will meet at the McDonald's in Middletown to exchange the children at 4pm on Sunday afternoons. Both parties will try to be on time, but if one is running late, he/she will call the other's cell phone and let him/her know of the delay.

Father shall have visitation with the children every Wednesday evening from 6:30 to 8:30 p.m. Father will pick the children up at Mother's house and will drop them off at Mother's house. If there is a school activity on Wednesday evening so that the child(ren) cannot visit with Father, then Tuesday evening may be substituted.

Father and Mother will follow the visitation schedule set forth in the Standard Visitation Guidelines regarding holidays except for Christmas. Mother will have the holidays in Column 1 on odd years and the holidays in Column 2 on even years. Father will have the holidays in Column 1 on even years and the holidays in Column 2 on odd years. The children will spend all of Christmas Eve with Mother every year and all of Christmas Day with Father every year. Mother will drop the children off at Father's home at 9pm on Christmas Eve and Father will keep the children until 4pm the afternoon before school resumes after Winter Break. Father will drop the children off at Mother's house that afternoon.

Mother will have the children for all of Spring Break.

Fill in the date you have the form notarized.



Affidavit of Consent

Be it remembered that on July 20, 2004, the above named petitioner and respondent personally came before me, the subscriber, a Notary Public for the State and County listed below, who being duly sworn to law did depose and say: I, the undersigned hereby agree upon the following custodial/visitation agreement for the above-named child(ren). I have signed this consent agreement voluntarily and of my own free will.

We hereby waive our right to a Review of a Commissioner's Agreement

Sign in the presence of a notary or court staff.

s Order is entered pursuant to this Voluntary

Anne C. Smith

John D. Smith

Petitioner

Respondent

State of Delaware

State of Delaware

County of Kent

County of Kent

Sworn to subscribed before me:

Sworn to subscribed before me:

Donna King

Mediator/Notary Public

Donna King

Mediator/Notary Public

So Ordered this Date:



Signed by Commissioner.

Commissioner

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

IN RE THE MARRIAGE OF



Anne C. Smith

Petitioner,

and

John D. Smith

Respondent,

File No.: _____

Petition No.: _____

Check the county in which you are filing.

WAIVER OF RIGHTS UNDER THE "SERVICEMEMBERS CIVIL RELIEF ACT"

STATE OF DELAWARE

Kent

COUNTY

Check the county in which you are filing.

ss.

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, March 25, 2004, personally appeared before me, a Notary Public for the State of Delaware in the County declared above, John D. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Respondent in the above captioned case.
2. That Affiant is active duty in the United States military: a
3. The Affiant waives his/her rights under the "Servicemembers Civil Relief Act" and so acknowledges that he/she, or his/her attorney, will be required to appear at all legal proceedings associated with the above captioned case.

The "Affiant" is the Respondent. ONLY the Respondent may complete this form. If you are the Petitioner in this proceeding, you may not fill out this form.



Sign in the presence of a notary or court staff.

John D. Smith

Respondent ("Affiant")

SWORN TO AND SUBSCRIBED before me this date, March 25, 2004



Signed by notary or court staff.

Donna Young

Notary Public or Clerk of Court

Section 2

PARENT EDUCATION CLASSES



IF YOU HAVE NOT ALREADY DONE SO, you **MUST** file the certificate below:



Certificate(s) of Completion of Parent Education Class (*file original(s)*)

Complete this section ONLY if you and the Respondent are parents of the child named in the Petition for Visitation or the Petition to Modify Visitation.

- All parents with children under the age of 17 must take a Parent Education Class. If your child is between the ages of **8 and 16**, he or she must also attend the class. A listing of available classes is available at the Family Court Resource Centers. Once you and your child have completed the Parent Education Class, a Certificate(s) of Completion of Parent Education Class will be given to you.
- You must file the **ORIGINAL** Certificate(s) of Completion of Parent Education Class with the Family Court. If you have already taken the class, an original Certificate(s) of Completion should be in your file.
- Although the matter may be scheduled for Mediation, the Court will **NOT** schedule your Court Hearing before a Judge until you file the required Certificates of Completion.
- You should register for the Parent Education Classes **AS SOON AS POSSIBLE** because the classes tend to fill quickly and you may be placed on a waiting list.
- The parent with whom the child primarily lives is responsible for taking the child to the classes and filing the original Certificate of Completion. If your child lives with you and the other parent equally, then you, as the person who filed the Petition for Visitation

or the Petition to Modify Visitation, are responsible for taking the children to the classes and filing the original Certificate of Completion.

- If your child **DOES** have to attend the seminars, we suggest you take the children to a provider that offers both the parent seminars **AND** the children seminars to save yourself time and money.



**SECTION 3 DESCRIBES WHAT
HAPPENS NEXT.**

Section 3

MEDIATION



After all of the Respondents have been served with the Petition for Visitation or Petition to Modify Visitation and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your visitation matter for **Mediation**. **ALL PARTIES are required to attend.**

- The Court will **NOT** schedule Mediation if there is an active **No Contact Order** involving you and the Respondent(s) or there has been a previous finding of domestic violence such as the following:

- A Protection from Abuse Order, **OR**
- An adjudication of criminal charges.

If there is an active No Contact Order involving you and the Respondent(s), you will **NOT** attend Mediation and the Court will schedule a Court Hearing before a Judge.

- Mediation is **NOT** a Court Hearing. At Mediation, a Mediator (a neutral third party) will **try to help** you and the Respondent(s) reach an agreement about visitation. The Mediator will ask you and the other party to tell how you both think the matter should be resolved and will work with you to find a solution that is agreeable to both of you. In other words, the Mediator is there to help you and the other party work together in deciding what arrangement is best for your child. Therefore, try your best to come with a “spirit of cooperation.”



CONSENT ORDERS

- If, at the end of Mediation, you and the other party reach an agreement, the Mediator will type your agreement into a document and you and the Respondent(s) will sign the agreement. The Mediator will also sign the agreement. Then, you will be allowed to

leave and the Mediator will give your signed agreement to a Commissioner. The Commissioner will decide whether your agreement should become a court order, called a **Consent Order**.

- If the Commissioner decides your agreement should become a Consent Order, the Commissioner will sign the agreement and the Consent Order will be mailed to you and the Respondent(s). You will **NOT** have to go to a Hearing with a Judge. Most often, the Commissioner will sign a Consent Order proposed by a Mediator.
- Once a Consent Order is signed by a Commissioner, it is a court order and you and the Respondent(s) **MUST** follow the terms of the Order.



TEMPORARY ORDERS

- If you filed a **Petition for Visitation** and you and the other party do **NOT** reach an agreement at Mediation, the Mediator will suggest a **Temporary (Interim) Order** for a Judge to sign. A temporary order is entered so both parents can have contact with the child while the parties are waiting for their hearing to be scheduled.
- A Judge will review the suggested Order and will either sign it as an Interim Order or will change some of the terms before signing it as an Interim Order. The case will then be scheduled for a Court Hearing after you complete the parent education class (see page 32). The Interim Order will remain in effect until another Court Order is issued. You and the Respondent(s) **MUST** follow the terms of the Interim Order until that time.
- If you filed a **Petition to Modify Visitation**, then you will not receive a temporary order. The current visitation order will remain in place until you and the Respondent(s) can have a Court Hearing before a Judge.
- As an alternative, **you and the other party** may reach a temporary agreement at Mediation. This agreement would be made with the

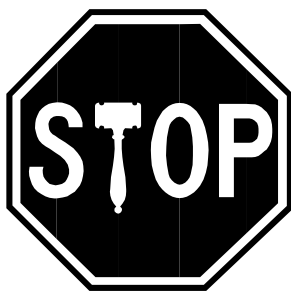
intent that it should only last until the Judge makes a decision after your Court Hearing. If you do this, the Mediator will type your temporary agreement into a document and you and the other party will sign the temporary agreement. The Mediator also will sign the temporary agreement. Thereafter, you will be allowed to leave and the Mediator will give your signed temporary agreement to a Commissioner. The Commissioner will decide whether your temporary agreement should become a court order, which is called an **Interim Consent Order**.



You should come to Mediation prepared to discuss how visitation should occur. You should review the Family Court's **Standard Visitation Guidelines** to get a general idea of visitation arrangements. The Standard Visitation Guidelines are available in the Resource Centers and on the Family Court website. Consider whether the Standard Visitation Guidelines accommodate your and the Respondent's schedule as well as the schedule of the child. You are not required to follow the Standard Visitation Guidelines. At Mediation, you and the Respondent(s) can work together to establish a visitation schedule that works best for you, Respondent(s) and, **most importantly** your child.



Be realistic when asking for the terms of a visitation order. The law says that it is better for a child to have at least some contact with both parents unless that contact would endanger the child's physical health or significantly impair his or her emotional development. The focus is on what is in the **CHILD'S best interests**. Just because **YOU** do not want the other parent(s) to be involved in the child's life may not mean that is in your **CHILD'S** best interest. Therefore, at Mediation, be prepared and try to work together and establish a visitation schedule that is in the best interest of the child.



**IF YOU REACHED AN AGREEMENT
AT MEDIATION, THIS IS THE END OF
THE PACKET.
OTHERWISE, GO TO SECTION 4.**

Section 4

HEARING WITH A JUDGE

SCHEDULING THE HEARING



A **Court Hearing** will be scheduled by the Court **ONLY** if:

- The Mediation was unsuccessful (no agreement or a temporary agreement was reached) **OR** Mediation was not required; **AND**
- The original **Certificates of Completion** for the Parent Education Class have been filed. **THE COURT WILL NOT SCHEDULE A HEARING UNTIL THE CERTIFICATES OF COMPLETION HAVE BEEN FILED WITH THE COURT.**

You do not need to file any additional paperwork to have your hearing scheduled. The Court will notify you when your hearing is scheduled, by mailing you a **Notice** to inform you of the time and date of the **Court Hearing**.



Some judges may schedule a **pre-trial hearing**. The purpose of this hearing is to discuss the status of your case prior to scheduling a full evidentiary hearing where you will present evidence and call witnesses.



If you cannot attend the scheduled hearing, you must file the following form:



Motion for Continuance (*file the original and mail one copy to each Respondent*).

- If, once you receive your Notice, you cannot attend the scheduled pre-trial or evidentiary hearing, you must contact the Court **IMMEDIATELY** by filing a **Motion for Continuance**. **DO NOT** call the Court. On this Motion, you must state **very specific reasons**

why you cannot attend the hearing. You must have a legal and unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day. Before you file the Motion for Continuance, you must contact the Respondent(s) regarding the continuance and then **tell the Court in your motion how the Respondent(s) feels about the continuance**. Because the law is very strict when it comes to rescheduling, these Motions are not always granted. Read the Motions Instruction Packet for more information about Motions.

- You will be notified by the Court if your Motion for Continuance has been granted. **UNLESS THE COURT GRANTS YOU A CONTINUANCE, YOU MUST APPEAR AT COURT THE DAY OF YOUR SCHEDULED HEARING.** If you fail to appear at the hearing, the Court may dismiss your Petition for Visitation or Petition to Modify Visitation and you will have to start the process again by filing a new petition and paying another filing fee.

THE DAY OF THE HEARING



Complete the following form and bring it to Court with you on the day of your hearing.



Affidavit of Non-Military Service form.

- Under Federal law, if the Respondent has never filed an answer, or otherwise appeared in this custody / visitation matter, you must file an Affidavit of Non-Military Service on the day of the hearing. This tells the Court that the Respondent is not in the military, so the Court can enter an Order.



The Court Hearing is a Trial in front of a Judge. At the Court Hearing, you and the Respondent(s) will each be given an opportunity to tell your side of the case and ask witnesses questions. During the Court Hearing, the Judge expects you to follow a certain procedure. It is important that you are familiar with this procedure so you know what you are allowed to do, when you are allowed to talk, and how to tell your side of the story.



Family Court has developed a **Court Hearing Procedure Overview** that explains generally what the Court Hearing procedure is and should answer many of the questions you have about the procedure. Family Court also has developed a series of **Answers to Frequently Asked Questions on Your Court Hearing** to help you organize and prepare for your Court Hearing. It will be helpful to read this information before your scheduled hearing. All Overviews and Frequently Asked Questions are available in the Resource Centers located in each courthouse.



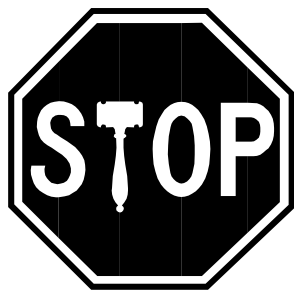
At the hearing, it is up to **YOU** to prove to the Judge **WHY** it is in the **child's best interest** for the Court to grant you what you are requesting in your

Petition for Visitation or Petition to Modify Visitation. The best interest standard is explained on pages 8 & 9 of this Instruction Packet. Information regarding grandparent visitation is found on page 17 of the packet. Review that information before the hearing, so you are prepared to present your case to the Court.



After both sides have presented all of their evidence, one of two things can happen. The Judge can **announce his/her decision** at the end of the hearing, in which case you will leave the Courthouse knowing what the visitation arrangement is. **OR**, the Judge can **reserve decision**. When the Judge reserves decision, he/she considers all of the information presented during the hearing and issues a written order explaining the visitation arrangement sometime after the hearing. Regardless of how the Judge issues the order, you should receive a copy of the Judge's decision, or Court Order, in the mail.

Once the Court has entered a Visitation Order, you and the Respondent(s) should follow the terms of the Order. In other words you should do what the Order tells you to do. The Court will not enforce any agreements made by the parties that are not in a Court Order.



**THIS IS THE END
OF THE VISITATION
INSTRUCTION
PACKET.**

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

MOTION FOR Continuance

Fill in the title of the motion that you are filing.

Petitioner

Respondent

Name Anne C. Smith		
Street Address 101 Oak Street		
Apt. or P.O. Box Number Apt. # 123		
City Dover	State DE	Zip Code 19901
Social Security Number 111-22-333	Date of Birth 2/3/64	
Attorney Name and Phone Number n/a		

Name John D. Smith		
Street Address 490 Pine Street		
Apt. or P.O. Box Number		
City Wilmington	State DE	Zip Code 19899
Social Security Number 787-98		
Attorney Name and Phone Number n/a		

File Number CK04-12111
Petition Number

Fill in the type of hearing that is scheduled. This information appears on the Notice of Hearing you received in the mail.

A PROCEEDING involving **Visitation** having been scheduled in this Court, Movant hereby moves the Court for **a continuance** and, in support thereof, alleges the following facts:

The parties' daughter, Mary Smith has suffered from severe tonsillitis. She is scheduled for surgery on November 30th, 2004, the date of the parties' custody hearing. I request that the Court grant a continuance so that I can be with my daughter while she is in surgery. I have contacted the Respondent and he agrees that a continuance should be granted.

Describe in detail for the Court why it should grant your motion. Tell the Court how the other party feels about your request.

SWORN TO AND SUBSCRIBED
before me this date,

Sign in the presence of a notary.

November 10, 2004

Anne C. Smith
Movant/Attorney

Donna King
Notary Public/Clerk of Court

Signed by notary or court staff.

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date **11/10/2004** by **John D. Smith** at the address listed on the petition, being **John D. Smith**, first class postage pre-paid.

Fill in the Respondent's name and the date that you mailed him/her a copy of the motion.

SWORN TO AND SUBSCRIBED
before me this date,

Sign in the presence of a notary.

November 28, 2004

Anne C. Smith
Movant/Attorney

Donna King
Notary Public/Clerk of Court

Signed by notary or court staff.

The Family Court of the State of Delaware

In and For ☐ New Castle ☒ Kent ☐ Sussex County

Check the county in which you are filing.

In re the Marriage of:
Petitioner

Respondent

Name	Anne C. Smith	
Street Address	101 Oak Street	
Apt. or P.O. Box Number	Apt. #123	
City	State	Zip Code
Dover	DE	19901
Social Security Number	Date of Birth	
111-22-3333	2/3/64	
Attorney Name and Phone Number		
n/a		

Name	John D. Smith	
Street Address	490 Pine Street	
Apt. or P.O. Box Number		
City	State	Zip Code
Wilmington	DE	19899
Social Security Number	Date of Birth	
787-98-6767	7/13/65	
Attorney Name and Phone Number		
n/a		

File Number
CK04-12111
Petition Number
04-42301

The section below is to be completed by and signed in the presence of a Notary Public/Clerk of Court on the day of your Divorce/Annulment Hearing.

Fill in the county where you are filing,

AFFIDAVIT OF NON-MILITARY SERVICE

STATE OF DELAWARE)

Kent COUNTY)

SS.)

Fill in the date you have the form notarized.

BE IT REMEMBERED, that on this date, November 30, 2004, personally appeared Before me, a Notary Public for the State of Delaware in the County declared above, Anne C. Smith, ("Affiant"), who, being duly sworn by me according to law, did depose and say:

1. That Affiant is the Petitioner in the Petition for Divorce/Annulment;
2. That Respondent is not in the military service of the United States of America; and
3. That Affiant has made this Affidavit pursuant to the provisions of § 200 of the Act of Congress entitled "Soldiers and Sailors Civil Relief Act of 1940" (50 U.S.C.A. App. 520) approved October 17, 1940.



Sign in the presence of a notary or court staff on the day of your hearing.



Anne C. Smith

Petitioner

SWORN TO AND SUBSCRIBED before me this date, November 30, 2004



Signed by notary or court staff.

Donna King

Notary Public or Clerk of Court